UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,357	10/24/2000	Kumar Balachandran	8194-393	2727

20792	7590	02/23/2005	

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER
KUMAR, PANKAJ

ART UNIT	PAPER NUMBER
2631	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/695,357	BALACHANDRAN ET AL.
	Examiner	Art Unit	
	Pankaj Kumar	2631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>09 December 2004</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

        Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: <u>1-3,5-9,11,12,14-19,21,22,24,25,27-33,35,36,38,39,41-46 and 49</u>.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>48 and 50</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see attached.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).

13. ☐ Other: _____.

TESFALDET BOCURE
PRIMARY EXAMINER

Advisory Action

Applicant's arguments are persuasive for claim 34 but not for claims 48 and 50.

Applicant argues that claim 34 is similar to claim 20 and hence claim 34 should have allowable subject matter as claim 20 has allowable subject matter. This is persuasive. The office's indication of claim 34 being rejected as it was discussed earlier was a typo.

As per claim 48, applicant argues that Eswara does not teach one or more frequencies used in one of the beams would be within the bandwidth of frequencies defined by another beam since Eswara teaches sets of traffic frequencies and a control frequency for assigning the traffic frequencies. This is not persuasive since applicant did not claim that frequencies of one beam would be within the bandwidth of frequencies of another beam. Instead what applicant claimed is that there are a number of traffic frequencies whose sum equals a frequency range or bandwidth (claimed bandwidth defined by the plurality of traffic frequencies) (Eswara: traffic frequencies A+B+C+D) and that there are frequencies of a system (claimed frequencies associated with an auxiliary cellular communication system) (Eswara system which comprises i.e. BTS) which include or overlap (claimed coexists within) that same frequency range or bandwidth of the sum of the traffic frequencies (claimed same bandwidth) (Eswara: system frequencies U+X+A+B+C+D include or overlap with the same traffic frequencies A+B+C+D).

As per claim 50, applicant argues Barany does not teach randomly selecting frequencies since Barany teaches PRACH or packet access random channel which randomly selects the transmission time when sharing a common broadcast channel. This is not persuasive. Barany teaches in col. 14 last paragraph that PCCCH has information to allocate channels (col. 14 line 50-53) and PCCCH includes PRACH (col. 14 lines 55-56) or packet access random channel. Hence, channels (claimed frequencies) are being selected randomly in Barany. Time synchronization by synchronizing to time slots occurs with PFCCH and PSCH (col. 14 lines 64-65)